

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 12, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 454

Introduced by Senator Pavley

February 16, 2011

~~An act to add Section 7110.05 to the Business and Professions Code,~~
An act to amend Section 25900 of, and to add Section 25402.11 to, the
Public Resources Code, and to amend Section 399.4 of the Public
Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Pavley. Energy efficiency standards.

(1) Existing law establishes the State Energy Resources Conservation and Development Commission and vests with the commission jurisdiction over specified matters related to energy. Existing law requires the Attorney General, upon the request of the commission, to petition a court of competent jurisdiction to enjoin violations of law that is within the subject matter of the commission. Existing law requires the commission to prescribe, by regulation, appliance efficiency standards.

This bill would authorize the commission to establish an administrative enforcement process to enforce the above standards. The bill would provide for the assessment of civil penalties by the courts or administrative civil penalties by the commission for a violation of the above standards. The bill would require the penalties collected to be deposited in the Appliance Efficiency Enforcement Subaccount, which

this bill would establish in the Energy Resources Program Account, and would authorize the commission to expend the moneys in the subaccount, upon appropriation by the Legislature, as specified. The bill would require the court, upon granting of relief for a violation of the above standards, to award the commission the reasonable costs incurred by the commission in investigating and prosecuting the action.

~~(2) Existing law requires the commission to prescribe, by regulation, building design and construction standards, and energy and water efficiency design standards for new residential and nonresidential buildings.~~

~~This bill would require the commission and the Contractors' State License Board to collaborate to identify and investigate the failure of licensed and unlicensed contractors to comply with the above standards and to obtain the necessary building permits, and to conduct an education and awareness campaign for contractors and consumers regarding the permitting requirements.~~

~~(3)~~

(2) Existing law provides that it is the policy of this state and the intent of the Legislature that the commission administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority. Existing law provides for the regulation of public utilities under the Public Utilities Act. A violation of the Public Utilities Act is a crime.

This bill would prohibit a public utility from issuing rebates or incentives for energy efficiency improvements unless the recipient of the rebate or incentive certifies that ~~a licensed contractor was used, as appropriate, and the applicable permitting requirements were followed,~~ *for the improvement or installation was done in compliance with all applicable permitting requirements and by a licensed contractor, if applicable.* Because a violation of this provision would be a crime under the Public Utilities Act, the bill would impose a state-mandated local program.

~~(4)~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation that maximizes the energy saved by the state's various
3 energy efficiency statutes, regulations, and programs.

4 SEC. 2. The Legislature finds and declares all of the following:

5 (a) California's ~~building~~ and appliance energy efficiency
6 standards, specified in ~~Part 6 of Title 24 of, and Article 4 Article~~
7 ~~4 (commencing with Section 1601)~~ of Chapter 4 of Division 2 of
8 Title 20 of; the California Code of Regulations, ~~respectively,~~
9 represent a state resource for accomplishing increased energy
10 efficiency in ~~newly constructed buildings, additions, and alterations~~
11 ~~to existing buildings, and in~~ appliances. These standards are
12 recognized as leading the nation in energy savings and serving as
13 one of the primary energy policy tools that has resulted in
14 California's per capita energy use staying essentially constant over
15 the past 30 years while that of the rest of the United States
16 increased steadily by nearly 50 percent.

17 ~~(b) The effectiveness of the building energy efficiency standards~~
18 ~~is dependent on the conscientious efforts of licensed contractors~~
19 ~~in California to build buildings and install components and~~
20 ~~equipment in compliance with the standards.~~

21 ~~(c) The Governor and the Legislature recognize that many~~
22 ~~buildings are being retrofitted by unlicensed contractors and~~
23 ~~without required permits. Contractors operating in the underground~~
24 ~~economy are in flagrant violation of California contracting law.~~
25 ~~Unlicensed and licensed contractors who market their services~~
26 ~~with these underground practices engage in unfair competition,~~
27 ~~undercutting legitimate contractors who endeavor to~~
28 ~~conscientiously comply with contracting, building, and business~~
29 ~~laws. This underground activity denies state and local governments~~
30 ~~license and building permit revenue, diminishing the ability of~~
31 ~~state and local agencies to provide enforcement services intended~~
32 ~~to protect consumers by ensuring compliance with these laws.~~
33 ~~These practices particularly damage and diminish the potential for~~
34 ~~conscientious compliance with the building energy efficiency~~
35 ~~standards.~~

36 ~~(d) The mission of the Contractors' State License Board is to~~
37 ~~protect consumers by regulating contractors to promote the health,~~
38 ~~safety, and general welfare of the public in matters related to~~

1 construction. As a part of fulfilling this mission, it is important for
2 the board's licensing program to include efforts to eradicate the
3 underground practice of performing construction work without
4 building permits and failing to comply with the building energy
5 efficiency standards.

6 ~~(e) The State Energy Resources Conservation and Development~~
7 ~~Commission is responsible for establishing energy efficiency~~
8 ~~building codes and appliance standards in California. As such, that~~
9 ~~commission has expertise in how to raise awareness and enforce~~
10 ~~these standards. It has become critically important for that~~
11 ~~commission and the Contractors' State License Board to ensure~~
12 ~~that all buildings and appliances meet California's efficiency~~
13 ~~standards and send a strong, definitive message to those whose~~
14 ~~objective is illegal financial gain at the expense of safe building~~
15 ~~practices and energy efficiency.~~

16 ~~(f)~~

17 (b) The appliance efficiency standards deliver cost-effective
18 energy savings to consumers. They are an important component
19 of the state's programs to manage its energy consumption, conserve
20 natural resources, and improve the quality of life for all its citizens.
21 The Governor and Legislature recognize that significant quantities
22 of appliances are sold and offered for sale in California that do not
23 meet the state's energy efficiency standards. The products
24 needlessly consume resources and saddle consumers with hidden
25 long-term costs after the initial purchase. Furthermore, inadequate
26 certification of appliances sold in California undermines the state's
27 ability to ensure that products sold in California meet the state's
28 efficiency standards.

29 ~~(g)~~

30 (c) These violations result in a substantial financial loss to
31 consumers who purchase energy efficiency goods and services,
32 and represent unfair competition that dramatically impacts the
33 economic viability of legitimate businesses. It is critical for
34 California to maintain a business climate favorable to legitimate
35 competition, so that conscientious contractors, manufacturers,
36 distributors, retailers, Home Energy Rating System raters, and
37 other businesses are able to sustain their businesses against unfair
38 competition.

39 ~~SEC. 3. Section 7110.05 is added to the Business and~~
40 ~~Professions Code, to read:~~

~~7110.05. The State Energy Resources Conservation and Development Commission and the board shall collaborate to identify and investigate the failure of licensees and unlicensed contractors to comply with the building energy efficiency standards and to obtain building permits, and to conduct an education and awareness campaign to increase knowledge of permitting requirements among contractors and consumers.~~

~~SEC. 4.~~

SEC. 3. Section 25402.11 is added to the Public Resources Code, to read:

25402.11. (a) (1) The commission may adopt regulations establishing an administrative enforcement process for a violation of a regulation adopted pursuant to subdivision (c) of Section 25402 and for the assessment of an administrative civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. The process shall comply with the requirements of Chapter 4 (commencing with Section 11400) and Chapter 4.5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In assessing the amount of an administrative penalty, the commission shall consider all of the following factors:

(A) The nature and seriousness of the violation.

(B) The number of violations.

(C) The persistence of the violation.

(D) The length of time over which the violation occurred.

(E) The willfulness of the violation.

(F) The violator's assets, liabilities, and net worth.

(b) If the commission finds that a violation of the regulations adopted pursuant to subdivision (c) of Section 25402 has occurred or is threatening to occur, the commission may refer the matter to the Attorney General to petition a court to enjoin the violation. The court may grant prohibitory or mandatory injunctive relief as warranted by issuing a temporary restraining order, preliminary injunction, or permanent injunction, and may assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, considering the factors specified in paragraph (2) of subdivision (a).

(c) Penalties collected pursuant to this section shall be deposited into the Appliance Efficiency Enforcement Subaccount, which is hereby established in the Energy Resources Program Account.

1 The moneys in the Appliance Efficiency Enforcement Subaccount
2 may be expended by the commission, upon appropriation by the
3 Legislature, for the education of the public regarding appliance
4 energy efficiency and for the enforcement of the regulations
5 adopted pursuant to subdivision (c) of Section 25402.

6 (d) An order imposing an administrative civil penalty shall be
7 subject to judicial review pursuant to subdivisions (a) and (b) of
8 Section 25534.2.

9 (e) A person shall not be liable for a civil penalty pursuant to
10 subdivision (b) if that person is subject to an administrative civil
11 penalty pursuant to subdivision (a).

12 (f) In a civil action brought on behalf of the commission
13 pursuant to this section, upon granting relief, the court shall award
14 to the commission the reasonable costs incurred by the commission
15 in investigating and prosecuting the action.

16 ~~SEC. 5.~~

17 *SEC. 4.* Section 25900 of the Public Resources Code is
18 amended to read:

19 25900. Except as provided in Sections 25402.11 and 25531,
20 if the commission finds that any provision of this division is
21 violated or a violation is threatening to take place that constitutes
22 an emergency requiring immediate action to protect the public
23 health, welfare, or safety, the Attorney General, upon request of
24 the commission, shall petition a court to enjoin the violation. The
25 court may grant prohibitory or mandatory injunctive relief as
26 warranted by way of temporary restraining order, preliminary
27 injunction, and permanent injunction.

28 ~~SEC. 6.~~

29 *SEC. 5.* Section 399.4 of the Public Utilities Code is amended
30 to read:

31 399.4. (a) (1) In order to ensure that prudent investments in
32 energy efficiency continue to be made that produce cost-effective
33 energy savings, reduce customer demand, and contribute to the
34 safe and reliable operation of the electric distribution grid, it is the
35 policy of this state and the intent of the Legislature that the
36 commission shall continue to administer cost-effective energy
37 efficiency programs authorized pursuant to existing statutory
38 authority.

39 (2) As used in this section, the term “energy efficiency” includes,
40 but is not limited to, cost-effective activities to achieve peak load

1 reduction that improve end-use efficiency, lower customers' bills,
2 and reduce system needs.

3 (b) (1) Any rebates or incentives provided by any public utility
4 for energy efficiency improvement and installation of energy
5 efficient components, equipment, or appliances in buildings shall
6 be provided only if ~~the recipient of the rebate or incentive certifies~~
7 ~~that a licensed contractor was used, as appropriate, and any~~
8 ~~applicable permitting requirements were followed, for the~~
9 ~~improvement or installation.~~ *the improvement or installation was*
10 *done in compliance with all applicable permitting requirements*
11 *and by a licensed contractor if a license is required.*

12 (2) This subdivision does not imply or create new authority or
13 responsibility, or expand existing authority or responsibility, of
14 the public utilities for the enforcement of the building energy and
15 water efficiency standards adopted pursuant to subdivision (a) or
16 (b) of Section 25402 of the Public Resources Code, or appliance
17 efficiency standards and certification requirements adopted
18 pursuant to subdivision (c) of Section 25402 of the Public
19 Resources Code.

20 (c) The commission, in evaluating energy efficiency investments
21 under its existing statutory authority, shall also ensure that local
22 and regional interests, multifamily dwellings, and energy service
23 industry capabilities are incorporated into program portfolio design
24 and that local governments, community-based organizations, and
25 energy efficiency service providers are encouraged to participate
26 in program implementation where appropriate.

27 ~~SEC. 7.~~

28 *SEC. 6.* No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.